IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4805 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

CHIEF OFFICER SHREE

Versus

DY. ENGINEER, GEB

Appearance:

1. First Appeal No. 4805 of 2001

MR MC SHAH for Petitioner No. 1

MS LILU K BHAYA for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 02/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. ADMIT. Learned counsel Ms.Lilu K. Bhaya waives service on behalf of the respondent.

2. The learned Civil Judge (S.D.), Navsari, on 4.1.2001, allowed the suit being Special Civil Suit No.38 of 1995 filed by the respondent-Gujarat Electricity Board by passing the following order:-

> "The Plaintiff do recover Rs.1,05,080.81 Ps. from the defendant. If the amount is tendered within one month from the date of this order, no interest to be charged. On failure to tender the said amount within one month, the defendant/Board is entitled to charge 18% p.a. interest from the date of the suit till its realisation. No order as to costs. Decree to follow."

3. The appellant, Chief Officer of Navsari Nagar Palika, has challenged the said judgment and decree by filing the present appeal.

4. The learned counsel, Mr.M.C.Shah, after inviting our attention to Ground No.11 of the appeal, stated that the appellant was not informed about the said judgment passed against the Nagar Palika by its lawyer and the appellant came to know about the decree only on 17.2.2001 when it received a letter addressed by the respondent Board and, within two days thereafter, i.e. 19.2.2001, the appellant has paid the entire decretal amount. Under the circumstances, it was submitted that no amount of interest could be levied from the appellant Nagar Palika. Learned counsel, Ms.Bhaya, appearing for the respondent Board, submitted that no indulgence could be granted to the appellant especially when the appellant has failed to pay the amount within the stipulated time provided in the impugned judgment. Under the judgment, the appellant was required to pay the decretal amount on or before 4.2.2001. Instead, the amount has been paid on 19.2.2001. Thus, there was admittedly delay of 15 days as far as the deposit is concerned. There is no reason for us to doubt the reasons stated in the appeal memo, namely, that the Nagar Palika was not informed about the judgment and it came to know about the judgment when it received the letter from the respondent Board on 17.2.2001. Thus, even if there is delay of 15 days, by that fact itself, the respondent Board cannot claim interest @ 18% especially when the Board has not challenged the impugned judgment by filing a separate appeal and has virtually accepted the option given to the appellant Nagar Palika.

5. Thus, considering the facts and circumstances of the case, we allow this appeal by modifying the decree to the extent that the plaintiff shall recover Rs.1,05,080.81 Ps. from the defendant within 50 days from the date of the judgment and decree, i.e. 4.1.2001. The rest of the directions in the judgment shall remain as it is.

Sd/-
(K.R.Vyas, J.)

Sd/-
(D.H.Waghela,J.)
(KMG Thilake)